



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2018-0555; FRL-9992-89-Region 6]

Air Plan Approval; Texas; Revisions to Public Notice for Air Quality Permit Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing one revision to the Texas State Implementation Plan (SIP) submitted on July 9, 2018 to revise the public notice provisions for certain air quality permit applications. The EPA is also proposing ministerial changes to the Code of Federal Regulations (CFR) to reflect recent EPA SIP approvals to the Texas SIP for public notice provisions for air quality permit applications.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2018-0555, at <https://www.regulations.gov> or via email to layton.elizabeth@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Elizabeth Layton, 214-665-2136, layton.elizabeth@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Elizabeth Layton, Air Permits Section, EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, TX 75202, 214-665-2136, layton.elizabeth@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Elizabeth Layton or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Section 110(a)(2)(C) of the CAA requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of

Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160-51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166. This proposed approval action will address one revision to the Texas SIP submitted on July 9, 2018 by the Texas Commission on Environmental Quality (TCEQ). This proposal will revise the public notice revisions applicable to air quality permit applications.

II. The EPA's Evaluation

A. Evaluation of the July 9, 2018 Revisions to Texas Public Notice Requirements

On July 9, 2018, the TCEQ submitted one revision to the Texas SIP (Rule Project No. 2017-027-039-LS) revising the public notice provisions applicable to air quality permit applications under 30 Texas Administrative Code (TAC) Chapter 39, Sections 39.411 and 39.603 and Chapter 55, Section 55.152. The accompanying Technical Support Document (TSD) for this action includes a detailed analysis of the submitted revisions to the Texas SIP. In many instances the revisions are minor or non-substantive in nature and do not change the intent of the originally approved SIP requirements; these minor revisions to 39.411(e), 39.411(f), and 39.603(a), (b), and (c) update cross references, correct grammar, and renumber existing SIP approved provisions. These minor, non-substantive revisions are discussed in detail in the TSD which is included in the docket for this proposed rulemaking.

The substantive revisions to 30 TAC Sections 39.411, 39.603 and 55.152 establish new provisions that provide for one, consolidated 30-day comment period for air quality permit applications where the executive director has declared the application administratively and technically complete and has prepared a draft permit within 15 days of receipt of the application. This consolidated process would create a combined Notice of Receipt of Application and Intent to Obtain Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) and would continue to require applicants to comply with the existing SIP-approved elements for newspaper notice and sign posting. The combined public notice process could be used by any permit applicant applying for a for major or minor NSR permit as long as the executive director has declared their application to be administratively and technically complete and has prepared a draft permit within 15 days of the receipt of the application. The EPA has determined it is appropriate to approve these revisions to the Texas SIP as these revisions to public notice for eligible air permit applications are consistent with the existing federal requirements for public notice by providing the required 30-day comment period and therefore, will not interfere with attainment, reasonable further progress, or any other applicable requirements of the Act.

B. Ministerial Changes to the CFR

We are also proposing ministerial changes to 40 CFR 52.2270(c) to reflect that 30 TAC Section 39.411(e)(11)(A)(v) as adopted by the State on December 7, 2016, is SIP-approved. The EPA fully approved this provision on May 9, 2018 but neglected to correctly identify this notation in the amendments to 40 CFR 52.2270(c) at that time. *See* 83 FR 21178.

III. Proposed Action

We are proposing to approve revisions to the Texas SIP that revise the NSR public notice requirements. We have determined that the revisions submitted on July 9, 2018 were developed

in accordance with the CAA and EPA's regulations, policy, and guidance for NSR permitting. Therefore, under section 110 of the CAA, the EPA proposes approval of the revisions to 30 TAC Section 39.411, 39.603, and 55.152 adopted on May 9, 2018, and submitted to the EPA on July 9, 2018.

The EPA is also proposing ministerial changes to 40 CFR 52.2270(c) to reflect that 30 TAC Section 39.411(e)(11)(A)(v) adopted by the State on December 7, 2016, is SIP-approved.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 30, 2019.

David Gray,

Acting Regional Administrator, Region 6.

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